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U.S. Department of Justice

Immigration and Naturalization Service

PUBLIC COPY

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[REDACTED]

FEB 28 2003

FILE [REDACTED] Office: Portland (POO)

Date:

IN RE: Applicant:

[REDACTED]

APPLICATION: Application for Certificate of Citizenship under Section 341(a) of the Immigration and Nationality Act, 8 U.S.C. § 1452(a)

IN BEHALF OF APPLICANT:

[REDACTED]

**Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Director
Administrative Appeals Office

EB2803-0782 341

DISCUSSION: The application was denied by the District Director, Portland, Oregon, and a subsequent appeal was dismissed by the Associate Commissioner for Examinations. The appeal matter is before the Associate Commissioner on a motion to reopen. The motion will be dismissed, and the order dismissing the appeal will be affirmed.

This matter is before the Associate Commissioner based on the presentation of new evidence regarding the birth of applicant's father, [REDACTED]. There was no evidence relating to the father's actual date or place of birth in the prior record, but only an indication that he was born in Panama. Therefore, the applicant's father was classified as an alien. Counsel has now submitted the father's birth certificate showing that he was born in the Panama Canal Zone after February 26, 1904 and before September 30, 1979. Therefore, the father acquired U.S. citizenship at birth under section 303 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1403.

The record reflects that the applicant was born on December 26, 1956, in the Republic of Panama. The applicant's father [REDACTED] was born in the Panama Canal Zone on April 1, 1938, and became a U.S. citizen at birth. The applicant's mother, [REDACTED] was born in September 1936 in the Republic of Panama and became a naturalized U.S. citizen July 23, 1974, when the applicant was 17 years and 7 months old. The applicant's parents never married each other. The applicant was lawfully admitted for permanent residence on April 24, 1974. The applicant seeks a certificate of citizenship under section 321 of the Act, 8 U.S.C. § 1432.

The application was denied by the district director and that decision was affirmed by the Associate Commissioner on appeal.

On motion, counsel states that the applicant was the child of two naturalized U.S. citizen parents who at the time of their naturalization was under the age of 18 years and residing permanently in the United States. Therefore, he is eligible under section 321 of the Act.

Section 321 of the Act was repealed on February 27, 2001, by the Child Citizenship Act (CCA) of 2000, Pub.L. 106-395, which removed the legal separation requirement from the rules of derivative naturalization. The provisions of the CCA are not retroactive. *Matter of Rodriguez-Trejedor*, 23 I&N Dec. 153 (BIA 2001). However, as noted in the publication of the interim rule implementing the CCA, all persons who acquired citizenship automatically under former section 321 of the Act, as previously in force prior to February 27, 2001, may apply for a certificate of citizenship at any time.

Former section 321 of the Act provided, in part, that:

(a) a child born outside of the United States of alien parents, or of an alien parent and a citizen parent who has subsequently lost citizenship of the United States, becomes a citizen of the United States upon fulfillment of the following conditions:

- (1) The naturalization of both parents; or
- (2) The naturalization of the surviving parent if one of the parents is deceased; or
- (3) The naturalization of the parent having legal custody of the child when there has been a legal separation of the parents or the naturalization of the mother if the child was born out of wedlock and the paternity of the child has not been established by legitimation; and if-
- (4) Such naturalization takes place while said child is under the age of 18 years; and
- (5) Such child is residing in the United States pursuant to a lawful admission for permanent residence at the time of the naturalization of the parent last naturalized under clause (2) or (3) of this subsection, or thereafter begins to reside permanently in the United States while under the age of 18 years.

Section 321 of the Act specifically required a child to be born outside of the United States of alien parents, or of an alien parent and a citizen parent who has subsequently lost citizenship of the United States.

Counsel has submitted evidence that the applicant's father was born in the Panama Canal Zone, acquired U.S. citizenship at birth and never subsequently lost that U.S. citizenship. Therefore, the applicant is ineligible for the benefits of former section 321 of the Act because the applicant was born outside of the United States to one citizen and one alien parent.

Therefore, the provisions of section 303 of the Act must be examined.

Section 303 of the Act provides that:

- (a) Any person born in the Canal Zone on or after February 26, 1904, and whether before or after the effective date of this Act, whose father or mother or both at the time of the birth of such person was or is a citizen of the United States, is declared to be a citizen of the United States.

(b) Any person born in the Republic of Panama on or after February 26, 1904, and whether before or after the effective date of this Act, whose father or mother or both at the time of the birth of such person was or is a citizen of the United States employed by the Government of United States or by the Panama Railroad Company, or its successor in title, is declared to be a citizen of the United States.

The applicant was born in the Republic of Panama. The record is devoid of evidence that the applicant's U.S. citizen parent was employed by the Government of the United States or by the Panama Railroad Company, or its successor in title, when the applicant was born as required in section 303(b) of the Act.

INTERP § 303.1(b)(3) addresses the legal requirements for legitimation under Panamanian Civil Code pursuant to the Panamanian Constitution of 1946. Panamanian Law No. 60 holds that a person born out of wedlock in the Republic of Panama, who has been recognized or acknowledged as provided shall be regarded as having been legitimated retroactive to birth. The requisite acknowledgement or recognition must be by the father, as distinguished from the mother, and such acknowledgement or recognition can only be accomplished in four different ways:

1. by the father declaring it before an appropriate official of the Civil Registry;
2. by public deed;
3. by testament; and
4. by court decision.

When the matter is accomplished by one of the last three methods, registration of the acknowledgement in the Civil Registry is essential in order for it to have validity before the courts. It follows, therefore, that an official document from the Civil Registry of the Republic of Panama, which recites that the records thereof reflect the father's acknowledgement of the child in one of the aforementioned ways shall be required as proof of legitimation through acknowledgement. By the same token, an official document which merely shows that the mother made the statement relative to the child's paternity, is insufficient proof, even when the father thereafter acknowledges the child before a Service officer and states under oath that he acknowledged the child before a Panamanian government official and signed documents in connection therewith.

The present record contains the applicant's certificate of birth which lists the names of his father and mother. There are no dates on the form to indicate when it was issued other than reference to that particular form being authorized for use by decree on April 12, 1967. The record fails to contain evidence that any of the four requirements for legitimation; the father declaring it before an appropriate official of the Civil Registry; by public deed; by

testament; and by court decision, as required by Panamanian Law No. 60, have been satisfied.

Since the applicant has failed to establish that he was legitimated pursuant to the requirements of the father's domicile under Panamanian Law No. 60, there is no necessity to examine the requirements for eligibility under sections 301(g) or 309 of the Act. Therefore, the motion will be dismissed, and the district director's decision will be affirmed.

ORDER: The motion is dismissed. The order of August 20, 2002, dismissing the appeal is affirmed.